IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2647 of 2003
With
SPECIAL CIVIL APPLICATION NOS.2180, 2684, 2706, 2752
and 2896 of 2003

HONOURABLE MR.JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

HINDUSTAN DOOR OLIVER LIMITED - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR KEYUR GANDHI for NANAVATI ASSOCIATES for Petitioners
MR I.M. PANDYA, AGP, for Respondents

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/12/2005

ORAL JUDGMENT

1.0 In these petitions common facts and question of law are involved and therefore they are taken up for hearing together and disposed of by way of the present common judgement.

2.0 In these petitions the petitioners challenge the action of the State Government referring the question of abolition of contract labour system

prevailing in the petitioner companies to the State Advisory Labour Board constituted under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the said Act). The petitioners have also challenged the notice issued to the petitioners calling upon them to furnish the details in the prescribed proforma.

3.0 The short facts as emerging from the petitions are as under:

3.1 The petitioners companies are engaged in the business of manufacturing and supplying various articles and goods. The petitioners engage contract labour for work of canteen, house keeping, security and fabrication which are not incidental or necessary for the manufacturing activity of the petitioner companies. For carrying out the said activities on contract basis the petitioner companies are duly registered with the State Government as contemplated under section 7 of the Act and they are holding valid certificates.

3.2 In the year 1997, the State Government referred the question of abolition of contract labour system in the aforesaid activities to the State Advisory Contract Labour Board at the instance of the Union. Notice was issued to the petitioners calling upon to furnish necessary details. The petitioners submitted necessary details as required by the Board. Written

submissions were also submitted showing that the work undertaken through the contract labour system in the companies is not of perennial nature and/or is not incidental to or necessary for manufacturing operations. The Board has also visited the companies and verified the processes in which the petitioners engage contract labour and had also taken statements of the concerned workers/contractors.

3.3 After hearing the petitioners and the concerned Union, the Board made a report and forwarded its recommendations/report to the State Government. In spite of this, the State Government, keeping aside the report of the Board, once again referred the question of abolition of contract labour system without even conveying the outcome of the earlier reference to the petitioners. The petitioners were also issued notices calling upon them to furnish the details in the prescribed proforma. It is under these circumstances the petitioners have approached this Court by way of the above petitions.

4.0 Learned Advocate for the petitioners submitted that the State Government could not have made a fresh reference without taking any decision on the report submitted to it by the State Advisory Contractor Labour Board. According to him, the Board had made the report after hearing the parties and considering all the materials placed before it by both the parties and therefore there was no reason for discarding the said report and to refer

for a fresh advice. Learned Advocate submitted that in spite of the fact that the petitioners have participated in the same, copy of report was not furnished to the petitioners. It is further submitted that the work undertaken through contract labour system is neither incidental to the manufacturing operations nor of a perennial nature which requires abolition thereof. He, therefore submitted that the impugned reference is illegal and deserves to be quashed and set aside.

5.0 Learned AGP appearing for the State Government submitted that the State Advisory Board had sent its report to the State Government and in the meanwhile the term of the office of the Chairman and the members of the State Advisory Board constituted by the appropriate government under section 4 of the Act had expired on 16.12.2000. He submitted that the Advisory Board came to be reconstituted on 23.5.2001 and therefore the respondent no.1 thought it fit that it is in the interest of justice that the appropriate government shall seek consultation afresh from the newly appointed office bearers of the State Advisory Board for its fresh advice on the question of abolition of contract labour system. According to him under these circumstances the impugned notice came to be issued to the petitioner company. He submitted that the said action is in terms of the mandate contained in section 32 of the Act and therefore these petitions deserve to be rejected.

6.0 From the above facts certain aspects are not disputed. In the year 1997 the State Government referred the question of abolition of contract labour system to the State Advisory Contract Labour Board. The petitioners participated in the proceedings and also filed their written statements. The Board during the proceedings visited the company and had verified the processes in which the petitioners engage contract labour and had also taken statements of the concerned workers/ contractors. In the case of SCA No.2647/2003, after considering the matter the Board had sent its report by letter dated 7.1.2000. It is evident that after receipt of the said report the State Government has not taken any action on the said report for quiet some time. According to the respondent, as stated in the Affidavit in Reply filed by Under Secretary in the office of the respondent No.1 stated that:

> "In the meanwhile, the term of office of the Chairman and the members of the State Advisory Board constituted by the appropriate government under Section 4 of the Act had expired on 16.12.2000 and the Advisory Board came to be reconstituted on 23.5.2001, the appropriate government i.e. the respondent no.1, thought it fit and appropriate that it is in the interest of justice that the appropriate government shall seek consultation afresh from the newly appointed office bearers of the State Advisory Board for its fresh advice on the question of abolition of contract labour system in certain activities being carried on in the establishment of the petitioner company."

Though the date of submission of report is different in other matters the

reason for fresh reference is the same in all the matters.

6.1 Firstly it is required to be noted that in the case of Hindustan Dorr Oliver Limited (SCA No.2647) the earlier Board had sent its report to the State Government on 1st January 2000. Thus, there is no dispute that the State Government has received the report in January 2000. Even according to the respondents, the term of office of the Chairman and the members of the State Advisory Board had expired on 16.12.2000. Therefore it is clear that for almost a full year the report was lying with the State Government without any action on the part of the State Government. There is no explanation forthcoming from the respondents as to why no action was taken for 11 months 15 days when the earlier Board was in existence.

6.2 The respondents have failed to point out anything to show that they were unable to look into the said report during the tenure of the earlier Board. In all cases the reports have been received. There is also no explanation as to why the government wants to seek consultation afresh from the newly appointed Board when there is already a report made in accordance with the provisions of law.

6.3 It is not the case of the respondents that the earlier report was defective nor it cannot be considered for any reason. The fresh advice is

sought merely because the respondent no.1 thought it fit to do so and not for any obvious reasons, which cannot be accepted in the eye of law. Merely because the government machinery thought it fit not to accept the earlier report cannot be a reasonable ground for starting the procedure all over again.

6.4 Another aspect of the matter is that earlier Board was also constituted under the provisions of section 4 of the Act. Section 10 of the Act envisages consultation by the State Government with the State Advisory Board on the question of abolition of contract labour system in any establishment.

6.5 In the present case the State Advisory Contract Labour Board had in fact made a report as contemplated under section 10 of the Act. However, it appears that the State Government has not considered the said report even though they had enough time to examine the same.

6.6 The State Government waited for a very long time and after constituting a new Board, has chosen to seek fresh advice. The State Government has not pointed out anything on record to show that the last report was not acceptable to them. In fact even in the affidavit in reply the respondent has kept silence about the report which has already been submitted by the earlier Board. No copy of the said report has been given to the petitioners which also

points to the fact that the State Government did not want to act upon the said report.

6.7 In short, the second reference is with regard to the same subject matter on which there is already a report on record of the case. Since no copy of the said report was supplied to the petitioners, they were deprived of their right to know about the view of the Board and also defeated their right to challenge the same in case it is adverse to the petitioners.

6.8 It is also required to be noted that the petitioners had participated in the earlier proceedings and the earlier Board had also considered the matter at length even by taking statements of concerned workers/contracts. It is also not the case of the respondents that there is change in the system and therefore fresh evidence is required.

6.9 In my view, the second innings is nothing but a burden on the exchequer by once again going through the same procedure when there is already a report on record after following proper procedure. I am, therefore, of the opinion that the action of once again referring the very same question to the State Advisory Labour Board is arbitrary and unjust.

7.0 On 19th December 2006 time was sought to file further reply and it was

made clear that if reply is not filed by next date the matters will be heard without the reply. However no such reply has been filed.

8.0 Learned counsel for the respondent has relied upon section 32 of the Act contending that the action seeking fresh consultation is in good faith and intended to be done in pursuance of the said Act and therefore in terms of the mandate contained in section 32 of the Act. From the findings recorded hereinabove, it cannot be said that the act was done in good faith. On the contrary, there are serious illegal omissions on the part of the State Government, which could not be justified in these proceedings. Therefore, benefits extended under section 32 of the Act are not available to the respondent.

9.0 In the premises the petitions succeed. The impugned notices calling upon the petitioners to furnish the details in the prescribed proforma are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

sr/ar